

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DEBARON SANDERS,

Case No. 2:14-cv-01966-JCM-NJK

Petitioner,

ORDER

v.

BRYAN WILLIAMS, SR., *et al.*,

Respondents.

Introduction

This action is a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Debaron Sanders, a Nevada prisoner. There is, before the Court, a motion to dismiss filed by respondents. The Court will grant the motion to dismiss in part and deny it in part, will dismiss certain of Sanders' claims, and will set a schedule for respondents to file an answer, responding to the remaining claims.

Background

Sanders' conviction is the result of events that occurred in the early morning of January 28, 2006, in Las Vegas. In its order on the appeal in Sanders' first state habeas corpus action, the Nevada Supreme Court described the crime in this case, as revealed by the evidence at Sanders' trial, as follows:

The jury heard testimony that Underwent Evans drove Sanders, Larry Bailey, and Gregory Boyd to a party in her car. When they arrived, they encountered the two victims and asked whether the party was over. The victims stated that the party ended after the police arrived and they were leaving the area because they were carrying guns. The victims walked

1 away and Sanders, Bailey, and Boyd got back into Evans' car. Boyd
2 suggested that they should rob the victims of their guns. Evans had given
3 Bailey the keys to her car, so Sanders, Bailey, and Boyd used her car to
4 pursue the victims. Bailey drove past the victims and parked the car ahead
5 of their direction of travel. As the victims traveled past the parked car, Boyd
6 and Sanders got out and shot at the victims as they ran away. Bailey urged
7 Boyd and Sanders to get back in the car and then drove to the Denny's
8 restaurant where they were apprehended. Sanders testified that Bailey was
9 the getaway driver for the robbery and admitted that he fired eight rounds
10 at the back of a victim who was running away.

11 Order of Affirmance, Exhibit 114, p. 2 (ECF No. 18-10, p. 3). One of the two victims was
12 killed; the other was shot, but survived, and testified at Sanders' jury trial.

13 Following a jury trial, Sanders was convicted of conspiracy to commit robbery, two
14 counts of attempted robbery with the use of a deadly weapon, conspiracy to commit
15 murder, murder with the use of a deadly weapon, and attempted murder with the use of
16 a deadly weapon. See Judgment of Conviction, Exhibit 63 (ECF No. 16-11). He was
17 sentenced to: 24 to 60 months in prison for the conspiracy to commit robbery; a
18 concurrent term of 24 to 60 months for the first count of attempted robbery, plus another
19 24 to 60 months for use of the deadly weapon; a concurrent term of 24 to 60 months for
20 the second count of attempted robbery, plus another 24 to 60 months for use of the deadly
21 weapon; a concurrent term of 36 to 120 months for the conspiracy to commit murder; a
22 concurrent term of life in prison with the possibility of parole after 20 years, for the murder,
23 plus another term of life in prison with the possibility of parole after 20 years, for the use
24 of the deadly weapon; and a consecutive term of 54 to 240 months for the attempted
25 murder, plus another 54 to 240 months for use of the deadly weapon. See *id.* In essence,
26 Sanders' was sentenced to serve a minimum of 49 years, and a maximum of life, in prison.
27 The judgment of conviction was filed on July 28, 2009. See *id.*

28 Sanders did not file a timely notice of appeal from the judgment of conviction. On
September 17, 2009, Sanders' counsel filed a "Motion to Notify Defendant of the
Judgment of Conviction," arguing that he did not receive notice of the entry of the
judgment, and seeking to restart the time to file a notice of appeal. See Motion to Notify
Defendant of the Judgment of Conviction, Exhibit 64 (ECF No. 16-12). On October 13,
2009, the state district court granted that motion. See Reporter's Transcript, October 13,

1 2009, Exhibit 68, pp. 3-4 (ECF No. 16-16, pp. 4-5). Sanders then filed a notice of appeal
2 on October 16, 2009. See Notice of Appeal, Exhibit 69 (ECF No. 16-17). However, on
3 January 7, 2010, the Nevada Supreme Court dismissed the appeal as untimely filed. See
4 Order Dismissing Appeal, Exhibit 75 (ECF No. 16-23). The Nevada Supreme Court
5 issued its remittitur on February 2, 2010. See Remittitur, Exhibit 76 (ECF No. 16-24).

6 On July 28, 2010, with court-appointed counsel, Sanders filed his first state habeas
7 action. See Petition for Writ of Habeas Corpus (Post-Conviction), Exhibit 82 (ECF No. 17-
8 4). On September 29, 2011, the state district court ruled that Sanders asserted a viable
9 claim that he was deprived of a timely direct appeal due to ineffective assistance of
10 counsel, and permitted Sanders to assert his direct appeal claims. See Order, Exhibit 96
11 (ECF No. 17-18). On October 6, 2011, Sanders filed a notice of appeal to the Nevada
12 Supreme Court, and proceeded with his direct appeal claims. See Notice of Appeal,
13 Exhibit 98 (ECF No. 17-20); see *also* Appellant's Opening Brief, Exhibit 110 (ECF No. 18-
14 6); Appellant's Reply Brief, Exhibit 112 (ECF No. 18-8). On May 14, 2013, the Nevada
15 Supreme Court affirmed the judgment of conviction. See Order of Affirmance, Exhibit 114
16 (ECF No. 18-10). The Nevada Supreme Court's remittitur was issued on June 11, 2013.
17 See Remittitur, Exhibit 115 (ECF No. 18-11).

18 On June 18, 2014, Sanders filed a second state habeas action. See Petition for
19 Writ of Habeas Corpus (Post-Conviction), Exhibit 117 (ECF No. 18-13). The state district
20 court dismissed Sanders' petition on October 28, 2014, finding that it was untimely filed,
21 under NRS § 34.726. See Findings of Fact, Conclusions of Law and Order, Exhibit 121
22 (ECF No. 18-17). Evidently, Sanders did not appeal from that ruling.

23 On October 8, 2015, Sanders filed a third state habeas action. See Petition for Writ
24 of Habeas Corpus (Post-Conviction), Exhibit 123 (ECF No. 18-19); Memorandum of
25 Points and Authorities in Support of Writ of Habeas Corpus (Post-Conviction), Exhibit 124
26 (ECF No. 18-20). The state district court dismissed Sanders' petition on February 3, 2016.
27 See Findings of Fact, Conclusions of Law and Order, Petitioner's Exhibit 1 (ECF No. 56-
28 1). Sanders appealed, and the Nevada Supreme Court affirmed on November 18, 2016,

1 ruling that the petition was untimely under NRS § 34.726. See Order of Affirmance,
2 Petitioner's Exhibit 3 (ECF No. 56-3). The remittitur issued on December 13, 2016. See
3 Remittitur, Exhibit 127 (ECF No. 58-2).

4 On June 19, 2017, Sanders filed a fourth state habeas action. See Petition for
5 Post-Conviction Writ of Habeas Corpus, Petitioner's Exhibit 9 (ECF No. 56-9). The state
6 district court dismissed that petition, on February 15, 2018, ruling that it was untimely
7 under NRS § 34.726 and successive under NRS § 34.810. See Findings of Fact,
8 Conclusions of Law and Order, Exhibit 130 (ECF No. 58-5). It appears that Sanders'
9 appeal from that ruling remains pending.

10 Meanwhile, on June 26, 2014, Sanders signed, and sent to this Court for filing, a
11 *pro se* federal habeas petition, initiating Case Number 2:14-cv-1068-JAD-GWF. See
12 Petition for Writ of Habeas Corpus, ECF No. 1-1 in Case No. 2:14-cv-1068-JAD-GWF.

13 The Court takes judicial notice of the proceedings in Case Number 2:14-cv-01068-
14 JAD-GWF.

15 Judge Jennifer A. Dorsey dismissed Sanders' petition in Case Number 2:14-cv-
16 01068-JAD-GWF, without prejudice, on July 2, 2014, because Sanders did not pay the
17 filing fee or submit a proper application to proceed *in forma pauperis*. See Order filed July
18 2, 2014, ECF No. 2 in Case No. 2:14-cv-1068-JAD-GWF; Judgment entered July 2, 2014,
19 ECF No. 3 in Case No. 2:14-cv-1068-JAD-GWF. On September 16, 2014, Sanders filed
20 a motion for reconsideration, arguing that he was not granted a sufficient opportunity to
21 pay the filing fee, and representing that he did not receive notice of the dismissal of the
22 action until September 4, 2014. See Motion to Reconsider Dismissal of Petition, ECF No.
23 4 in Case No. 2:14-cv-1068-JAD-GWF; see *also* Letter Filed December 5, 2014, ECF No.
24 5 in Case No. 2:14-cv-1068-JAD-GWF; Supplement to Motion to Reconsider Dismissal
25 of Petition, ECF No. 6 in Case No. 2:14-cv-1068-JAD-GWF.

26 On November 25, 2014, while the motion for reconsideration was pending in Case
27 Number 2:14-cv-01068-JAD-GWF, Sanders initiated this action, Case Number 2:14-cv-
28 01966-JCM-NJK. See Petition for Writ of Habeas Corpus (ECF No. 6). In view of the

1 proceedings in Case Number 2:14-cv-1068-JAD-GWF, this Court suspended
2 proceedings in this case pending the resolution of the motion for reconsideration in Case
3 No. 2:14-cv-1068-JAD-GWF. See Order entered May 14, 2015 (ECF No. 5).

4 On August 13, 2015, Sanders filed, in both of his federal habeas cases, a motion
5 to consolidate this case with Case Number 2:14-cv-1068-JAD-GWF. See Motion to
6 Combine Habeas Corpus Cases (ECF No. 8); Motion to Combine Habeas Corpus Cases,
7 ECF No. 7 in Case No. 2:14-cv-1068-JAD-GWF.

8 On September 8, 2015, Judge Dorsey denied the motion to consolidate cases, and
9 also the motion for reconsideration, in Case Number 2:14-cv-1068-JAD-GWF. See Order
10 entered September 8, 2015, ECF No. 12 in Case No. 2:14-cv-1068-JAD-GWF.

11 Then, on September 17, 2015, the Court denied the motion to consolidate cases
12 in this case, and set a schedule for further proceedings. See Order entered September
13 17, 2014 (ECF No. 10).

14 The respondents filed a motion to dismiss Sanders' *pro se* original petition on
15 December 2, 2015 (ECF No. 13).

16 On December 16, 2015, Sanders filed a motion for appointment of counsel (ECF
17 No. 20), and the Court granted that motion on January 25, 2016 (ECF No. 21). Gia A
18 McGillivray appeared as counsel for Sanders on March 8, 2016 (ECF No. 24), and the
19 Court set a schedule for counsel to file an amended petition on Sanders' behalf, and
20 denied the motion to dismiss the original petition as moot (ECF No. 28). However, on
21 June 14, 2016, McGillivray moved to withdraw (ECF No. 29). The Court granted that
22 motion on June 17, 2016 (ECF No. 30), and, on July 14, 2016, appointed William Gamage
23 to represent Sanders (ECF No. 31). Gamage appeared on July 25, 2016 (ECF Nos. 32,
24 33). However, on June 20, 2017, after several extensions of time, and failures to file an
25 amended petition, the Court discharged Gamage and appointed Mario Valencia to
26 represent Sanders (ECF No. 47). Valencia appeared on June 26, 2017 (ECF No. 48), but
27 he, too, promptly moved to withdraw on August 9, 2017 (ECF No. 49). The Court granted
28 Valencia's motion to withdraw on August 28, 2017, and appointed Mary Lou Wilson to

1 represent Sanders on September 13, 2017 (ECF Nos. 50, 51). Wilson appeared for
2 Sanders on September 14, 2017 (ECF No. 52).

3 On March 8, 2018, with counsel, Sanders filed an amended petition for writ of
4 habeas corpus (ECF No. 56). In the amended petition – Sanders’ operative petition –
5 Sanders asserts the following claims:

6 1. Sanders’ federal constitutional rights were violated because
7 the trial court erred in denying Sanders’ motion to suppress his confession.
See Amended Petition for Writ of Habeas Corpus (ECF No. 56), pp. 17-25.

8 2. Sanders’ federal constitutional rights were violated because
9 the trial court erred in rejecting Sanders’ *Batson* challenge to the
10 prosecution’s use of a peremptory challenge to strike an African-American
juror. See *id.* at 26-35.

11 3. Sanders’ federal constitutional rights were violated because
12 the trial court denied Sanders’ request for a jury instruction on voluntary
manslaughter. See *id.* at 36-43.

13 4. Sanders’ federal constitutional rights were violated because
14 the State presented insufficient evidence to convict Sanders of conspiracy
to commit robbery, attempted robbery with use of a deadly weapon, and
conspiracy to commit murder. See *id.* at 44-49.

15 5. Sanders’ federal constitutional rights were violated because
16 of the cumulative effect of the errors asserted in Claims 1 through 4. See *id.*
at 49-50.

17 6. Sanders’ federal constitutional rights were violated because
18 of ineffective assistance of his trial counsel, which allowed the State to
proceed on conflicting theories in Sanders’ trial and the trial of a co-
19 defendant. See *id.* at 51-58.

20 7. Sanders’ federal constitutional rights were violated because
21 the prosecution committed misconduct in proceeding on conflicting theories
in Sanders’ trial and the trial of a co-defendant. See *id.* at 59-65.

22 8. Sanders’ federal constitutional rights were violated because
23 of ineffective assistance of his trial counsel, on account of his trial counsel’s
failure to offer a jury instruction regarding character and failure to prepare
and present character witnesses at trial. See *id.* at 66-69.

24 9. Sanders’ sentence violates his federal constitutional rights.
25 See *id.* at 70-86.

26 10. Sanders’ federal constitutional rights were violated because
27 of ineffective assistance of his trial counsel, on account of his trial counsel’s
failure to prepare him to testify at trial. See *id.* at 87-88.
28

11. Sanders' federal constitutional rights were violated because of ineffective assistance of his trial counsel, on account of his trial counsel's failure to seek juvenile status for Sanders prior to trial. See *id.* at 88-90.

Respondents filed their motion to dismiss the amended petition on May 7, 2018 (ECF No. 57). Respondents contend, in the motion to dismiss, that all Sanders' claims are barred by the statute of limitations, that certain of his claims are unexhausted, that certain of his claims are barred by the procedural default doctrine, and that certain of his claims are not cognizable in this federal habeas action. Sanders filed an opposition to the motion to dismiss on May 20, 2018 (ECF No. 59), and respondents replied on May 25, 2018 (ECF No. 60).

Discussion

Statute of Limitations - Legal Standards

The Antiterrorism and Effective Death Penalty Act (AEDPA), enacted in 1996, established a one-year statute of limitations for federal habeas petitions filed by prisoners challenging state convictions or sentences; the statute provides:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. 2244(d)(1).

1 The AEDPA statute of limitations is tolled during the time that a properly filed
2 application for state post-conviction or other collateral review is pending in state court.
3 See 28 U.S.C. § 2244(d)(2).

4 A habeas petitioner is entitled to equitable tolling of the AEDPA statute of
5 limitations if the petitioner shows “‘(1) that he has been pursuing his rights diligently, and
6 (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.”
7 *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408,
8 418 (2005)); *Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir. 2009).

9 Expiration of the Limitations Period

10 With respect to the question when Sanders’ conviction became final, for purposes
11 of the analysis of this motion to dismiss, the Court accepts respondents’ position, which
12 gives Sanders the benefit of any doubt, and considers Sanders’ conviction to have
13 become final on August 12, 2013, which was ninety days after the Nevada Supreme Court
14 ruled on Sanders’ direct appeal claims on the appeal in his first state habeas action. See
15 Motion to Dismiss (ECF No. 57), p. 8 (“Sanders’ conviction therefore became final on
16 August 12, 2013.”); see also *Jimenez v. Quarterman*, 555 U.S. 113, 120-21 (2009);
17 *Bowen v. Roe*, 188 F.3d 1157, 1158-59 (9th Cir. 1999) (“[T]he period of ‘direct review’ in
18 28 U.S.C. § 2244(d)(1)(A) includes the period within which a petitioner can file a petition
19 for a writ of certiorari from the United States Supreme Court, whether or not the petitioner
20 actually files such a petition.”); but see *Randle v. Crawford*, 604 F.3d 1047 (9th Cir. 2010),
21 *cert. denied*, *Randle v. Skolnik*, 562 U.S. 969 (2010) (rejecting argument that Nevada
22 conviction does not become final until after resolution of direct appeal claims on appeal
23 pursuant to *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994)).

24 Sanders filed his second state habeas action on June 18, 2014. See Petition for
25 Writ of Habeas Corpus (Post-Conviction), Exhibit 117 (ECF No. 18-13). The state district
26 court dismissed that petition, finding that it was untimely filed, under NRS § 34.726. See
27 Findings of Fact, Conclusions of Law and Order, Exhibit 121 (ECF No. 18-17). Sanders
28 did not appeal from that ruling. An untimely state habeas petition is not “properly filed”

1 within the meaning of 28 U.S.C. § 2244(d)(2), and does not toll the AEDPA limitations
2 period. See *Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005). There was, therefore, no
3 tolling of the AEDPA limitations period on account of Sanders' second state habeas
4 action.

5 Sanders' third state habeas petition, filed October 8, 2015, was also ruled untimely,
6 and, therefore, provided no statutory tolling. See Findings of Fact, Conclusions of Law
7 and Order, Petitioner's Exhibit 1 (ECF No. 56-1); Order of Affirmance, Petitioner's Exhibit
8 3 (ECF No. 56-3).

9 Sanders' fourth state habeas action was not filed until June 19, 2017; it was also
10 ruled untimely, and, at any rate, was filed too late to have any bearing on the AEDPA
11 limitations analysis. See Findings of Fact, Conclusions of Law and Order, Exhibit 130
12 (ECF No. 58-5).

13 Sanders initiated his first federal habeas corpus action, Case Number 2:14-cv-
14 1068-JAD-GWF, on June 26, 2014, which was 47 days before the AEDPA limitations
15 period expired. See Petition for Writ of Habeas Corpus, ECF No. 1-1 in Case No. 2:14-
16 cv-1068-JAD-GWF. His petition in that case asserted the same five claims as his original
17 petition in this case. See Petition for Writ of Habeas Corpus (ECF No. 6); Petition for Writ
18 of Habeas Corpus, ECF No. 1-1 in Case No. 2:14-cv-1068-JAD-GWF. Sanders initiated
19 this action on November 25, 2014, while he was still litigating a motion to reconsider the
20 dismissal of Case Number 2:14-cv-1068-JAD-GWF. Sanders acted diligently in seeking
21 to prevent dismissal of his first federal habeas action, and in attempting to have it
22 consolidated with his second federal habeas action (this case) so as to avoid a limitations
23 bar. The Court finds that the dismissal of Sanders' first federal habeas action for failure
24 to pay the filing fee or submit a proper application to proceed *in forma pauperis*, and the
25 apparent delay in Sanders learning of that dismissal, was an extraordinary circumstance
26 warranting equitable tolling. The Court will grant Sanders equitable tolling from June 26,
27 2014, the date on which he initiated Case Number 2:14-cv-1068-JAD-GWF, to November
28 25, 2014, the date on which he initiated this case.

1 With that equitable tolling, Sanders' original petition in this case (ECF No. 1) was
2 timely filed. Only 318 days of the limitations period had elapsed (from August 12, 2013,
3 to June 26, 2014), and there were 47 days left.

4 After the initiation of this action, the 47 remaining days of the AEDPA limitations
5 period ran out on January 11, 2015. There was no statutory tolling between November
6 25, 2014, and January 11, 2015. And, Sanders makes no showing that equitable tolling
7 is warranted during that period.

8 Therefore, the Court determines that Sanders original petition in this case was
9 timely filed, but that his amended petition was untimely filed.

10 Statute of Limitations – Relation Back of Claims in Amended Petition

11 Therefore, the question whether the claims Sanders' untimely amended petition
12 (ECF No. 56) are barred by the statute of limitations turns on the determination whether
13 those claims relate back to Sanders' original petition (ECF No. 6), which, by virtue of
14 equitable tolling, was timely filed.

15 In *Mayle v. Felix*, 545 U.S. 644 (2005), the Supreme Court held that "[s]o long as
16 the original and amended petitions state claims that are tied to a common core of
17 operative facts, relation back will be in order," but "[a]n amended habeas petition ... does
18 not relate back (and thereby escape AEDPA's one-year time limit) when it asserts a new
19 ground for relief supported by facts that differ in both time and type from those the original
20 pleading set forth." *Mayle*, 545 U.S. at 650, 664.

21 Claims 1, 2, 3, 4 and 5 of Sanders' amended petition were asserted in his original
22 petition, and plainly relate back to the filing of that petition. Respondents appear to
23 concede as much. See Motion to Dismiss (ECF No. 57), pp. 9-12. Claims 1, 2, 3, 4 and
24 5, therefore, are not barred by the statute of limitations.

25 Claims 6 and 7 are based on Sanders' allegation that the prosecution presented
26 conflicting theories in Sanders' trial and the trial of a co-defendant. See Amended Petition
27 for Writ of Habeas Corpus (ECF No. 56), pp. 51-65. There is no claim in Sanders' original
28

1 petition based on those operative facts. Claims 6 and 7 do not relate back to the original
2 petition, and are barred by the statute of limitations.

3 In Claim 8, Sanders claims that his federal constitutional rights were violated
4 because of ineffective assistance of his trial counsel, on account of his trial counsel's
5 failure to offer a jury instruction regarding character and failure to prepare and present
6 character witnesses at trial. See *id.* at 66-69. There is no claim in Sanders' original petition
7 having anything to do with character evidence. Claim 8 does not relate back to the original
8 petition; it is barred by the statute of limitations.

9 In Claim 9, Sanders claims that his sentence violates his federal constitutional
10 rights. See *id.* at 70-86. There is no claim in the original petition based on the nature of
11 Sanders' sentence. Claim 9 does not relate back to the original petition, and is barred by
12 the statute of limitations.

13 In Claim 10, Sanders claims that his federal constitutional rights were violated
14 because of ineffective assistance of his trial counsel, on account of his trial counsel's
15 failure to prepare him to testify at trial. See *id.* at 87-88. There is no claim in the original
16 petition related to Sanders' preparation to testify. Claim 10 does not relate back to the
17 original petition. Claim 10 is barred by the statute of limitations.

18 In Claim 11, Sanders claims that his federal constitutional rights were violated
19 because of ineffective assistance of his trial counsel, on account of his trial counsel's
20 failure to seek juvenile status for Sanders prior to trial. See *id.* at 88-90. Sanders did not
21 assert any claim in his original petition based on such facts. Claim 11 does not relate back
22 to the original petition, and is barred by the statute of limitations.

23 Claims 6, 7, 8, 9, 10 and 11, then, will be dismissed on statute of limitations
24 grounds.

25 Respondents' Other Arguments

26 As Claims 6, 7, 8, 9, 10 and 11 are dismissed as barred by the statute of limitations,
27 the Court does not reach the question whether those claims are unexhausted or
28 procedurally defaulted, and the Court does not reach the question whether those claims

1 are cognizable in this federal habeas corpus action. See Motion to Dismiss (ECF No. 57),
2 pp. 12-17.

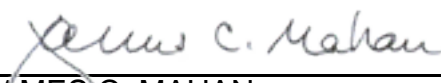
3 Regarding respondents' argument that Claim 5 is, in part, not cognizable in this
4 action, the Court declines to reach that question on this motion to dismiss, determining
5 that it will be better addressed along with the merits of all Sanders' remaining claims, after
6 respondents file an answer. Respondents may raise this issue in their answer.

7 Conclusion

8 **IT IS THEREFORE HEREBY ORDERED** that respondents' Motion to Dismiss
9 (ECF No. 57) is **GRANTED IN PART AND DENIED IN PART**. Claims 6, 7, 8, 9, 10 and
10 11 of petitioner's amended petition for writ of habeas corpus (ECF No. 56) are
11 **DISMISSED**. In all other respects, the motion to dismiss is denied.

12 **IT IS FURTHER ORDERED** that respondents shall, within 60 days from the date
13 of this order, file an answer, responding to the remaining claims in petitioner's third
14 amended habeas petition, which are Claims 1, 2, 3, 4 and 5. In all other respects, the
15 schedule for further proceedings set forth in the order entered September 13, 2017 (ECF
16 No. 51) remains in effect.

17
18 DATED June 15, 2018.

19
20 
21 JAMES C. MAHAN,
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28